

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3434 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SURESHPAL JAYSINH CHAUDHARI

Versus

STATE OF GUJARAT

Appearance:

MS JAYSHREE C BHATT for Petitioner

MR KC SHAH, AGP for Respondents.

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 27/08/96

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India the petitioner-detenu-Sureshpal Jaysinh Chaudhri has brought under challenge the detention order dated 29/3/1996 rendered by the respondent no.2 u/S. 3(1) of the Gujarat Prevention of Anti-Social Activities Ac, 1985 (Act No. 16 of 1985), hereinafter referred to as 'the PASA Act'.

2. The grounds on which the impugned order of detention has been passed appear at Annexure-B to the petition. They inter-alia indicate that the petitioner by himself and with the aid of his associates has been carrying on criminal and anti-social activities of running a hotel without authorised licence, obtaining water by having taken illegal connection from the pipeline running parallel to the high-way, damaging public property and committing theft of water and electricity and dealing in liquor as also threatening and beating witnesses in public. Following offences have been registered in the Radhanpur Police Station against him :-

- 1) CR 160/93 U/Ss.66B,65E of Bombay Prohi.Act
Pending in Court.
- 2) CR 179/93 U/Ss.66B,65E of Bombay Prohi.Act
Pending trial.
- 3) CR 188/93 U/Ss.66B, 65E of Bombay Prohi. Act
Pending trial.
- 4) CR 187/95 U/Ss. 66B of Bombay Prohi. Act
Pending in Court.
- 5) CR 78/94 U/s.349, 114 of the IPC read with sec. 39
of the Indian Electricity Act
Pending in Court.
- 6) CR 93/95 U/s. 349, 430 of the IPC
Pending in Court.
- 7) CR 34/96 U/s. 349-430, 186, 504, 506(2) of the IPC
read with sec. 135 of Bombay Prohi.Act
Pending in Court.

3. It has been recited that the detenu's anti-social activity tends to obstruct the maintenance of public order and in support of the said conclusion statements of witnesses have been relied upon. They indicate about some incidents of threatening and assaulting the witnesses. At this stage it may be noted that all these statements are general in nature and are relied upon for showing that the petitioner is head-strong person. Reference has also been made to two chapter cases of 17/93 and 69/95 respectively u/s. 93 of the Bombay Prohibition Act and 110G of the Criminal Procedure Code in which respectively surety of Rs.100/- and in the sum of Rs.5,000/- by order dated 21/3/1994 and 12/3/1996 have been taken from the petitioner.

4. It is on the aforesaid incidents that the detaining authority has passed the impugned order of detention while also relying upon the aforesaid case lodged against the petitioner. The petitioner has been stamped as a boot-legger within the meaning of section 2(b) of the PASA Act and 'dangerous person' within the meaning of sec. 2(c) of the PASA Act.

5. I have heard the learned advocate for the petitioner and the Id. A.G.P. for the State. The petitioner has challenged the aforesaid order of detention on number of grounds. But this petition can be disposed of on the ground that the petitioner has not been supplied with the copies of the statements of the witnesses on which subjective satisfaction is stated to have been reached for stamping the petitioner as a 'boot-legger' as also a 'dangerous person'. There is no dispute about the fact that the copies of the statements of the witnesses are not supplied. This means that the right of the detenu for making effective representation is impaired and this clearly shows violation of Art. 22(5) of the Constitution of India. Reference in this connection has been made to a decision of the Supreme Court in the case of Smt. Shalini Soni v. Union of India reported in (1980) 4 SCC 544. Following observations of the Apex Court from para.7 may be noted:-

"The matter may also be looked at from the point of view of the second facet of Article 22(5). An Opportunity to make a representation against the order of detention necessarily implies that the detenu is informed of all that has been taken into account against him in arriving at the decision to detain him. 'Grounds' in Article 22(5) do not mean mere factual inferences but mean factual inferences plus factual material which led to such factual inferences. The 'grounds' must be self-sufficient and self-explanatory. Copies of documents to which reference is made in the 'grounds' must be supplied to the detenu as part of the 'grounds'."

6. There are other grounds of challenge levelled against the impugned order of detention. However, in view of the fact that the petitioner would succeed directly on the strength of decision of Shalini Soni's case (supra), it is not necessary to deal with the other grounds. Hence, following order is passed :-

9. The impugned order of detention is hereby quashed and set aside. The petitioner-detenu-Sureshpal Jaysinh Chaudhri shall be fortherwith set at liberty if he is not required to be detained in any other case. Rule made absolute accordingly.

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